Supreme Court, U.S.
FILED
SEP 27 1999
OFFICE OF THE CLERK

(3)

NO. 99-117

IN THE
SUPREME COURT OF THE UNITED STATES

LUMBERMENS MUTUAL CASUALTY COMPANY,

Petitioner,

v.

LIBERTY MUTUAL INSURANCE COMPANY, et al.

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
For the District of Columbia Circuit

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

Edward J. Lopata
Counsel of Record
Daniel S. Katz
Tydings & Rosenberg LLP
100 East Pratt Street
26th Floor
Baltimore, MD 21202
(410) 752-9700

8pp

TABLE OF CONTENTS

I. THE COURT OF APPEALS' DECISION REVEALS NO CONSIDERATION OF THE DISTRICT COURT'S LEGAL ANALYSIS. 1

II. THE LOWER COURTS VIOLATED PETITIONER'S RIGHTS UNDER THE SEVENTH AMENDMENT AND DISPOSITIVE SUBSTANTIVE LAW BY FAILING TO PERMIT THE JURY TO DETERMINE THE MEANING OF THE CONTRACT AT ISSUE 2

III. THE LOWER COURT'S DECISIONS FAILED TO APPLY WELL SETTLED TENETS OF CONTRACT INTERPRETATION BY NOT LIMITING PMA'S AND LIBERTY'S RECOVERIES TO THE AMOUNTS AGREED UPON IN THEIR SETTLEMENT AGREEMENT 4

IV. CONCLUSION 6

TABLE OF AUTHORITIES

FEDERAL CASES

Salve Regina College v. Russell,
499 U.S. 225 (1991) 1, 2

STATE CASES

1901 Wyoming Avenue Corp. v. Lee, 345 A.2d
456 (D.C. App. 1975) 3

Jack Baker, Inc. v. Office Space Development Corporation, 664 A.2d 1236 (D.C. App. 1995) 3

Nationwide Mutual Insurance Company v. Tufts, 118 Md. App. 180, 702 A.2d 422 (1997), cert. denied, 349 Md. 104, 707 A.2d 89 (1998) 3

Pavel Enterprises, Inc. v. A.S. Johnson Company, Inc., 342 Md. 143, 674 A.2d 521 (1996) 3

PETITIONER'S REPLY BRIEF

Pursuant to Rule 15.6, Petitioner files its Reply Brief to address new points raised in Respondents' Brief in Opposition.

I. The Court of Appeals' Decision Reveals No Consideration of the District Court's Legal Analysis.

In its Petition for a Writ of Certiorari, Petitioner averred that the court of appeals, in contravention of this Court's directive in Salve Regina College v. Russell, 499 U.S. 225 (1991), failed to provide a careful consideration of the district court's legal analysis. In response, Respondents simply state that there is no evidence that the court of appeals impermissibly deferred to the district court's determination of state law. The problem with the court of appeals's decision, and Respondents' attempt to justify that decision, is that it gives no indication of any kind of review, much less the "careful consideration" mandated by this Court. The numerous state law issues raised by Petitioner in the appellate court were simply not addressed by the court of appeals. Respondents' own citation to Russell belies their own argument. They cite Russell for the proposition that

"[i]f the court of appeals finds that the district court's analytical sophistication and research have exhausted the state-law inquiry, little more need be said in the appellate opinion." 499 U.S. at 233. Notwithstanding this admonition, the opinion of the Court of Appeals lacks even that minimal finding.

II. The Lower Courts Violated Petitioner's Rights Under the Seventh Amendment and Dispositive Substantive Law by Failing to Permit the Jury to Determine the Meaning of the Contract at Issue.

Respondents contend, in their Brief, that, because the jury found that the parties who negotiated the Policy did not have a mutual intent as to the meaning of the term "accepted", the jury therefore could not resolve the ambiguity over the meaning of that word. Consequently, Respondents argue that the jury could not decide when the contract was accepted and, presumably, they contend that the district court was correct in making the factual determination of the meaning of the Policy language. Respondents' Brief at 9. However, Respondents are wrong in two respects.

First, if the Respondents are correct in asserting that the jury found that the parties did not have a mutual intent as to the

meaning of the Policy term "accepted", then the enforceability of the Policy is in question since, if there is no meeting of the minds as to the Policy language, there is no enforceable contract. Pavel Enterprises, Inc. v. A.S. Johnson Company, Inc., 342 Md. 143, 647 A.2d 521 (1996); Jack Baker, Inc. v. Office Space Development Corporation, 664 A. 2d 1236, 1238 (D.C. App. 1995 ("for an enforceable contract to exist, there must be … agreement as to all material terms; …"). Thus, there could be no liability imposed on Petitioner under the Policy.

Second, as set forth in the Petition for a Writ of Certiorari, it is beyond question that, while it is the court's function to determine if an ambiguity exists, it is for the jury, as finder of fact, to interpret the meaning of the ambiguous language. Nationwide Mutual Insurance Company v. Tufts, 118 Md.App. 180, 702 A.2d 422 (1997), cert. denied, 349 Md. 104, 707 A.2d 89 (1998); 1901 Wyoming Ave. Corp. v. Lee, 345 A.2d 456, 461, n. 8 (D.C. App. 1975). Contrary to Respondents' attempt to characterize Petitioner's argument, the principal error was that of the district court in usurping Petitioner's right to have

the jury interpret the meaning of the disputed policy language. By refusing to permit such a determination by the jury, the lower courts violated Petitioner's right to a jury trial under the Seventh Amendment.

III. The Lower Courts' Decisions Failed to Apply Well-Settled Tenets of Contract Interpretation by not Limiting PMA's and Liberty's Recoveries to the Amounts Agreed Upon in their Settlement Agreement.

As explained in the Petition, Ernst/PMA and Truland/Liberty entered into a settlement agreement in the underlying Lucy case that limited their respective recoveries against the Lumbermens policy. The amounts paid by Ernst/PMA and Truland/Liberty to settle and defend the underlying case total a lesser amount than the caps contained in the settlement agreement. Nevertheless, the trial court awarded Ernst/PMA and Truland/Liberty damages for prejudgment interest and attorneys' fees for prosecuting this action, which amounts far exceeded the caps in the settlement agreement. In response, Respondents assert that there were other settlement agreements that did not include such caps. Respondents' Brief at

17. They further assert that the only claims made by Ernst/PMA and Truland/Liberty against the Lumbermens policy are the claims for settlement amounts paid and fees incurred in the underlying cases, and contend that the additional claims for prejudgment interest and attorneys' fees in the instant action are not claims against the Lumbermens policy. Id. at 17-18. This assertion is legally and factually incorrect.

If the prejudgment interest and attorneys' fees do not arise out of a claim against the Lumbermens policy, it is difficult to imagine what they are based upon. These damages are unquestionably recoveries against the Lumbermens policy; but for the policy, Respondents could have made no claim. Further, if the cap in the settlement agreement was not intended to apply to these types of damages, then the language of the cap is meaningless. When they settled the Lucy case, Ernst/PMA and Truland/Liberty knew or should have known of the amount of their payments for settlement and attorneys' fees in that case, which totaled less than the amount of the cap.

If the award of interest and fees is impacted by the other settlement agreements, that do not include a cap, that is an issue that can be addressed by the district court on retrial. Nevertheless, the plain language of the Lucy settlement agreement compels the conclusion that the award of prejudgment interest and attorneys' fees for prosecuting this action is limited by the cap contained therein.

CONCLUSION

For the reasons contained in the Petition and herein, the lower courts' errors which violated Petitioner's right to jury trial and contravened applicable state law should be corrected, and a writ of certiorari should be granted.

Respectfully submitted,

Edward J. Lopata
Counsel of Record

Daniel S. Katz
TYDINGS & ROSENBERG LLP
100 East Pratt Street, 26th Floor
Baltimore, MD 21202
(410) 752-9700
Counsel for Petitioner